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CLEARINGHOUSE RULE 95-008

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Under what statutory authority does a person become ineligible for work not welfare (WNW) benefits for failure or refusal to sign the statement under s. HSS 207.09 (3)?

b. Section 49.27 (4) (d) 2. b., Stats., identifies several welfare-related sanctions that constitute a significant change in circumstances under WNW. However, a sanction for failure to participate in Learnfare is not included in the listed sanctions. Under what authority is s. HSS 207.10 (2) (b) 2. d., included in the rule? In addition, under what authority is s. HSS 207.10 (2) (b) 4., included in the rule? Finally, s. 49.27 (4) (d) 2. f., Stats., provides that a significant change in circumstances occurs under WNW when the combined equity value of all of a WNW group's assets exceeds the limitation in s. 49.19 (4) (bm), Stats. Section HSS 207.10 (2) (b) 8. extends the definition of significant change in circumstances to also include exceeding the asset limitations of s. 49.19 (4) (bu) and (by). This appears to conflict with s. 49.27 (4) (d) 2. f., Stats.

c. Section 49.27 (6) (a) 4., Stats., provides that transitional child care will be provided if, among other things, at least one person in the WNW group is employed in unsubsidized employment. However, s. HSS 207.20 (1) (a) 4. modifies this to include the requirement that the child care is needed to permit a member of the WNW group to accept or retain employment. It appears that this added language narrows, and therefore potentially conflicts with, the statutory language in s. 49.27 (6) (a) 4.

d. Section 49.27 (4) (g), Stats., generally provides two ways in which a WNW group may receive benefits past the 24-month general limitation. One way that the group may receive

extended benefits is if “unusual circumstances” are determined to exist [s. 49.27 (4) (g) 2., Stats.]. Section HSS 207.21 appears to provide for the extension of benefits when those “unusual circumstances” exist. However, s. 49.27 (4) (g) 1., Stats., also provides that benefits shall be extended if each person in the WNW group meets at least one of several specified criteria. It does not appear that the rule covers the provision of extra benefits in situations that may arise under s. 49.27 (4) (g) 1., Stats. The rule should make provisions for the extension of benefits under the conditions specified in s. 49.27 (4) (g) 1., Stats., and it appears that those provisions would be most appropriately placed in s. HSS 207.21.

2. Form, Style and Placement in Administrative Code

a. Because the terms “AFDC” and “WNW” are defined in s. HSS 207.03, those terms need not appear in parentheses in ss. HSS 207.01 and 207.02 and need not be preceded by the respective terms “aid to families with dependent children” and “work not welfare.”

b. In s. HSS 207.07, and throughout the rule, except for introductory material which ends with a colon, all subsections, paragraphs and subdivisions should end with a period, rather than a comma or semicolon or the word “and” or “or.” [See s. 1.03 (intro.), Manual]. The entire rule should be reviewed for proper usage of end marks.

c. As written, s. HSS 207.18 is confusing. It may be helpful to include an introductory paragraph, or a new subsection at the beginning of the section, which provides that if a WNW group member fails to meet the required employment and training activities without good cause, as determined by the WNW administrative agency under sub. (1), the WNW group member shall be subject to sanction under sub. (2). Then, sub. (2) could be rewritten to simply provide how the sanction is applied.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. HSS 207.03 (8), the appropriate federal citation to the food stamp program should be included in the rule. [See s. 1.07 (3) (a), Manual.]

b. A citation to the appropriate section of the rule under which benefits are determined should be included in s. HSS 207.07 (4) after the statutory citation to s. 49.27 (4), Stats.

c. In s. HSS 207.08 (3) (a), what does it mean to be “categorically” eligible for medical assistance benefits? Under which “category” in s. 49.46, Stats., does a member of a WNW group qualify for medical assistance? That statutory citation should be included in the rule.

d. In s. HSS 207.17 (2) (a) (intro.), the citation to Title IV-E of the Social Security Act of 1935 should be replaced by an appropriate citation to the U.S. Code. [See s. 1.07 (3) (a), Manual]. If a reference to Title IV-E helps to identify better the relevant provision of federal law, that reference can be included in a note to the rule. This comment also applies to s. HSS 207.20 (1) (a) 5.

e. Section HSS 207.18 (2) (c) notes that the benefit amount shall be reduced or no payment will be made. Does this statement relate to the way a sanction is computed under s. HSS 207.18 (2) (a)? If so, the appropriate cross-reference should be included.

f. It would be helpful to make the reference to ch. HSS 201, which is found in s. HSS 207.19 (1) (b), more specific so as to better identify the provisions of ch. HSS 201 that relate to nonfinancial eligibility requirements.

g. An appropriate reference to the applicable federal law under which the federal minimum wage is determined should be included in s. HSS 207.21 (3) (c). Also, the citation to 45 C.F.R. s. 251 should be double-checked to see if it exists.

h. A reference to the portion of the rule in which supportive services are defined or described should be included in s. HSS 207.22 (2).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. HSS 207.03 (10), the last part of the definition beginning with the phrase “for the purpose of” is superfluous and should be deleted. In addition, a quotation mark should be placed before the term “JOBS.”

b. In s. HSS 207.03 (17), the phrase “, the assistance program” is unnecessary and can be deleted. In addition, an appropriate U.S. Code citation should replace the reference to “section 1613 of Title XVI of the Social Security Act of 1935, as amended,”. If the reference to the Social Security Act is desired in the rule, it should be placed in a note. [See s. 1.07 (3) (a), Manual.]

c. Section HSS 207.03 (20) defines a “work not welfare group.” However, it appears that the remainder of the rule routinely refers to a “WNW group.” Accordingly, it would seem appropriate to define the term “WNW group” either along with, or instead of, the term “work not welfare group.”

d. It may be helpful to readers of the rule to indicate in a note to the rule the two counties that have been selected under s. HSS 207.04 (1) to participate in the work not welfare program.

e. In s. HSS 207.07 (1), a semicolon should be inserted in place of the comma following the word “county” and after the date “1995.”

f. The introductory phrase of s. HSS 207.08 (3) (b), (4) and (5) (a) and (b) should be rewritten to read “No member of a WNW group may be eligible for....”

g. In s. HSS 207.08 (5), the term “RNIP” is used twice but is not defined in the rule. The term “RNIP” should either be replaced by the phrase “relief of needy Indian persons” or be included in the definition portion of the rule.

h. The phrase “these benefits” in s. HSS 207.09 (1) (b) is vague. What benefits is the rule referring to?

i. It appears that the word “they” in s. HSS 207.09 (3) refers to the adult WNW group members required to sign a statement. If this is correct, the word “they” should be replaced by

the phrase “the adult WNW group members.” If “they” refers to others, the rule should be clarified accordingly. Also, the rule should provide a directive that the adult members of a WNW group be given a written explanation of the WNW benefits and employment and training requirements that they must signify that they received and understand.

j. The first sentence of s. HSS 207.09 (4) is very confusing. Whose signature constitutes registration for the employment and training activities? Must each individual sign to be registered? It appears that the rule should contain an affirmative requirement that each person subject to employment and training activities must register for them. In addition, what is the eligibility interview? The rule should contain an appropriate cross-reference to the provision that describes this interview.

k. In s. HSS 207.10 (1) (a) 1., it appears that the second sentence could be rewritten as follows: “If the WNW group receives child support payments of any amount for at least 3 consecutive months, the child support payments shall be budgeted prospectively in determining the WNW benefit amount.” Doing so would eliminate the need for the last sentence of the subdivision.

l. In s. HSS 207.10 (1) (a) 2. (intro.), the phrase “is not increased” should be replaced by the phrase “may not increase.” In addition, in subpar. a., the phrase “after that period” is vague. Does the phrase “after that period” refer to the six-month period, the 10-month period or some other period? The rule should be clarified accordingly.

m. In s. HSS 207.10 (1) (b) (intro.), the phrase “demonstration project” can be deleted since the rule defines the term WNW.

n. In s. HSS 207.10 (1) (b) 2, does the phrase “those months” refer to the first two months or the six-month period? The rule should be clarified accordingly.

o. In s. HSS 207.10 (2) (b) 2. b., the term “FS” is not defined. However, “food stamp program” is defined in the rule. If “FS” refers to the “food stamp program,” the latter should be substituted for the former.

p. Is the sanction referred to in s. HSS 207.10 (2) (b) 2. c., a sanction only for failure to cooperate “with child support” or is it for failure to cooperate in efforts directed at establishing the paternity of a nonmarital child and obtaining child support or other payments as provided in s. 49.19 (4) (h) 1. a., Stats.? The rule should be clarified.

q. In s. HSS 207.10 (2) (b) 10., the phrase “that a WNW group member is subject to” in the definition of “life-threatening emergency” is not necessary and should be deleted. In addition, is the term “unreasonable” necessary, or is there a reasonable and substantial risk of death or great bodily harm that would not qualify as a life-threatening emergency?

r. Although the rule defines “economic support agency” and “WNW administrative agency,” in a number of places, the rule simply refers to “the agency,” e.g., s. HSS 207.10 (2) (b) 10. and (4) (b) and (c). Throughout the entire rule, the phrase “the agency” should be replaced by either the “economic support agency” or the “WNW administrative agency” as appropriate.

s. To be consistent with s. 49.27 (4) (g) 1. c., Stats., the phrase “participate in” in s. HSS 207.10 (5) (c), should be replaced with the phrase “attend school as part of.”

t. In s. HSS 207.10 (6), the phrase “and assigning support rights” appears to be contradictory since the first sentence of sub. (6) indicates that support rights are *not* assigned to the state. This conflict should be clarified.

u. The word “This” in the second sentence of s. HSS 207.11 (1) (a) is vague. Does the word “This” refer to an incapacity, illness or injury? The word “This” should be replaced by a more appropriate word.

v. Section 49.27 (5) (c) 10., Stats., provides that a person need not participate in the employment and training activities under WNW if good cause for nonparticipation exists. However, the good cause exemption does not appear in s. HSS 207.11. It would seem appropriate to place a good cause exemption in this section of the rule and include a definition of good cause.

w. The last sentence of s. HSS 207.11 (1) (i) seems misplaced. It appears that this sentence would be more appropriate in a section of the rule describing eligibility conditions for WNW benefits rather than in the section on employment and training activities.

x. The word “The” should be inserted before the word “Head” and “household” in s. HSS 207.11 (1) (g), and the word “A” should be inserted before the word “Caretaker” in pars. (h) and (i). Finally, in par. (j), is the phrase “Medically-verified” necessary? Could that paragraph be rewritten to read: “Pregnant and provides a written statement from the person’s physician verifying the pregnancy and indicating that the person is unable to work.”

y. It appears that s. HSS 207.11 (2) (intro.) conflicts with par. (b) in that subsection. Subsection (2) (intro.) suggests that all registrants are to be referred to the WNW administrative agency and par. (b) provides that only some are to be referred. This apparent conflict should be clarified. Perhaps sub. (2) (intro.) could be rewritten as follows: “The economic support agency shall:”. Paragraph (a) could then be rewritten as follows: “Determine whether a registrant is exempt from participating in the employment and training activities under sub. (1).”

z. In s. HSS 207.12 (1) (intro.), should the reference to the program components in s. 49.193 (4), Stats., be a reference to the program components and requirements in s. 49.193, Stats.? This would seem to be appropriate in light of similar language in s. 49.27 (5) (e), Stats., and the reference to s. 49.193 (2) (b), Stats., found in par. (a).

aa. The term “(GED)” in s. HSS 207.12 (1) (f) should be deleted. Also, by what measure is the grade level 8.9 determined?

ab. In s. HSS 207.12 (1) (g), what is an “independence jobs program”? This program should be defined in the rule or the rule should contain an appropriate cross-reference.

ac. The term “paragraph” in s. HSS 207.12 (2) (d) is incorrect. It is unclear whether the term “paragraph” should be replaced by the term “section” or by a reference to another section of the rule. In addition, the phrase “Have the effect of filling” should be replaced by the word “Fill.”

ad. For purposes of clarity, in s. HSS 207.14 (intro.), a period should be inserted after the phrase “enrollment date.” The remainder of the (intro.) should be deleted and replaced by the following: “Orientation sessions may be conducted on an individual basis or a group basis and shall include the following:”.

ae. In s. HSS 207.14 (5), the phrase “job training partnership act-funded programs” should be deleted and replaced by the phrase “programs funded under.” A reference to the Job Training Partnership Act can be included in a note to the rule. Finally, the citation to 29 U.S.C. s. 1501 should include an ending citation rather than “et. seq.”

af. The term “(AODA)” in s. HSS 207.14 (6) should be deleted.

ag. In s. HSS 207.15 (3) (a) (intro.), the second sentence should be rewritten to provide: “If the WNW administrative agency determines that the new enrollee is not job ready, the WNW administrative agency shall provide the new enrollee a comprehensive assessment under par. (b).” In the third sentence, is the “initial assessment” the same as the screening required in the first sentence? If so, consistent terms should be used in both places. Finally, in subds. 3. through 5., the phrase “The enrollee’s” should be inserted before the first word.

ah. In s. HSS 207.15 (3) (b) 2., the phrase “administrative agency” is used. Does this refer to the WNW administrative agency? If so, the rule should use terms defined in the rule in a consistent manner.

ai. Section HSS 207.16 (1) (e) defines “independence jobs program” for purposes of that paragraph. Does this definition also apply to the use of that phrase in s. HSS 207.12 (1) (g)? If so, an appropriate cross-reference should be included or the phrase “independence jobs program” should be defined in the definitions section of the rule.

aj. For purposes of clarity, it may be helpful to include a definition of “economic self-sufficiency” as it is used in s. HSS 207.16 (2) (a).

ak. In s. HSS 207.16 (2) (c), how is it to be determined whether a commuting time is “generally accepted in the community”? It may be helpful to clarify this in the rule.

al. In s. HSS 207.16 (2) (d), the word “is” should be replaced by the phrase “may be.”

am. In s. HSS 207.16 (2) (j), the word “union” is used. However, par. (k) refers to “any legitimate labor organization.” Is there a distinction between these two terms? If not, consistent language should be used to identify the entity being referred to. If they are different, the rule should identify those differences.

an. Section HSS 207.16 (4) (a) 2. refers to the number of hours assigned under par. (a). However, subd. 2. is part of par. (a). This reference to par. (a) should be corrected or clarified.

ao. Because s. HSS 207.16 (4) (b) is an exception to par. (a), par. (a) (intro.) should be modified to include a phrase similar to the following: “except as provided in par. (b).” It would appear that this modification could best be made at the beginning of the third sentence of par. (a) (intro.).

ap. In s. HSS 207.17 (2) (a) 2. b., who is a “court worker” for purposes of the rule?

aq. In s. HSS 207.17 (2) (b) 2., the phrase “one who is” should be deleted.

ar. In s. HSS 207.17 (5), it may be helpful to include a note indicating examples of the other “agencies” providing supportive services to which referrals may be made. However, see comment v, above, relating to the use of the term “agency.”

as. In s. HSS 207.18 (2) (a) 1., the word “is” should be replaced by the word “was.” Also, in subd. 2., the word “obtained” should be replaced by the word “determined.” Finally, in subd. 2., is the food stamp portion reduced at the same rate only when the WNW grant is reduced to \$0, as the rule implies?

at. In s. HSS 207.18 (2) (b) (intro.), the phrase “If a sanction under par. (a) is imposed,” should be inserted before the first word of the introductory material.

au. In s. HSS 207.18 (2) (b) 3., the bracketed reference to ch. HSS 225 should be deleted. If it is important to include that reference, the reference to ch. HSS 225 should be included in a note to the rule. This comment also applies to s. HSS 207.20 (1) (c) 2. Also, it would appear to be appropriate for the rule to affirmatively state that a person to whom a sanction under s. HSS 207.18 applies is entitled to a fair hearing.

av. In s. HSS 207.19 (1) (d) 3., what is meant by “Alternative housing”?

aw. In s. HSS 207.20 (1) (c) 2., the word “a” should be inserted between the words “that” and “petition” in the second sentence. Also, it appears that the word “received” in that sentence should be replaced by the word “filed.” In addition, it appears that the phrase “made by the family,” or a similar phrase, should be added at the end of the last sentence. Finally, it may be helpful to include a note to the rule identifying where the petition for a fair hearing is to be filed.

ax. How much is the “health care services premium” identified in s. HSS 207.20 (2) (a) 6., and how is it determined?

ay. Does s. HSS 207.20 (2) (c) provide for the payment of a premium for family health insurance coverage or just for individual coverage?

az. How does a person “bank” transitional medical benefits under s. HSS 207.20 (2) (d) 1.?

ba. In s. HSS 207.21 (3) (b) 1., the citation for “SSI” should be removed and placed in the definition of “SSI” in s. HSS 207.03. Also, the term “(SSDI)” should be deleted and the phrase “Social Security Disability Insurance” should not be capitalized.

bb. Is the “state WNW on-site manager” referred to in s. HSS 207.21 (4) the same as the WNW on-site manager identified in s. HSS 207.04 (3)? If so, consistent terminology should be used.

bc. Are the hearings in s. HSS 207.22 (1) fair hearings under s. PW-PA 20.18? If so, it would seem that an appropriate cross-reference should be included in the rule. Also, the first “because” in the second sentence of sub. (1) should be deleted.